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No. 06-1151

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

JUANITA M. CRUMP-DONAHUE,

Petitioner,

v.

THE UNITED STATES,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Rule 44.1, Petitioner respectfully petitions this Court for a Rehearing on the grounds that because the District Court Judge *lied*, and provided *false* facts to the Eighth Circuit on Appeals, these lies caused the Eighth Circuit to use an incorrect "standard of review" to affirm the District Court "*Final Judgment.*"

INTRODUCTION

The dispute before this Court is whether Petitioner's Federal Tort Claims Act (FTCA) Case No. 4:05CV01844 should be allowed to proceed as an original case against the United States, founded upon FTCA 28 U.S.C. § 2671-80, and 1346. December 2005, after filing Personal Injury Claims with USDA and waiting six months for the federal agency to respond, Petitioner filed her first and only FTCA Case No. 4:05CV01844 against the United States in District Court. 28 U.S.C. § 2401(a)(b). The District Court, in a Final Judgment, *erroneously* ruled Petitioner's FTCA Case No. 4:05CV01844 was barred from proceeding, because there was another FTCA case on record, filed by Petitioner, that had been dismissed with prejudice, November 2005. Using the incorrect "standard of review," the Eighth Circuit used the de novo standard – question of law – to affirm the District Court's ruling that Petitioner's FTCA Case No. 4:05CV01844 was barred from proceeding in District Court by the *Res Judicata* Doctrine, or FTCA Judgment Bar, 28 U.S.C. § 2676.

STATEMENT

"Generally, the standard of review on appeal will be *de novo* – for question of law, *clearly erroneous* – for

determination of fact, or *abuse of discretion* for application of the law to the facts.

1. *De Novo*

The appellate court applies the *de novo* standard when reviewing questions of law. *See Cardinal Mooney High Sch Atheletic Ass'n*, 437 Mich 75, 80 (1991) and *People v. Conner*, 209 Mich App 419, 423 (1995). *De Novo* means that the appellate court review the question of law anew, without giving deference to the lower court's ruling. Issues of constitutional law are reviewed *de novo*. *In re Carey*, 241 Mich App 222, 226 (2000).

2. Clearly Erroneous

The appellate court applies the *clearly erroneous* standard of review when reviewing a lower court's findings of fact. A finding is considered "*clearly erroneous*" if, despite the fact that there is evidence to support the finding, the appellate court, after reviewing all the evidence, has a "definite" and firm conviction that a mistake has been committed. *Tuttle v. Dep't of State Hwys*, 397 Mich 44, 46 (1976).

3. Abuse of Discretion

The appellate court applies the *abuse of discretion* standard of review to a lower court's "discretionary" decisions. To show an *abuse of discretion* in making such decisions, "the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but the defiance thereof, not the exercise of reason but rather of passion or bias." *Spaulding v. Spaulding*, 335 Mich 382, 384-385 (1959).

STATEMENT OF THE ISSUE

The issue to be resolved is whether the District Court judge used a *false* "discretionary" decision to *preservice* bar Petitioner from proceeding with litigation of a first or original FTCA Case No. 4:05CV01844 filed against the United States, December 2005? Whether the District Court Judge, based on bias and prejudice, intentionally erred in deciding Petitioner had previously filed a FTCA Case against the United States that was dismissed with prejudice, November 2005? Whether the Eighth Circuit used the wrong standard of review – de novo – to affirm that Petitioner's FTCA Case No. 4:05CV01844 against the United States was barred based on the *res judicata* doctrine? In her Appeal, Petitioner informed the District Court and Eighth Circuit that on December 2005, FTCA Case No. 4:05CV01844 was the *only* FTCA case she had filed in District Court. However, because the Eighth Circuit ruled according to the law of *res judicata*, using *de novo* standard of review, "that if the District Court said Petitioner had filed a first FTCA case against the United States that had been dismissed with prejudice, November 2005, then the second FTCA Case No. 4:05CV01844, filed December 2005, was barred from proceeding." Therefore, the Eighth Circuit erroneously affirmed the District Court Judgment based on erroneous facts designed to "skewed the law."

ARGUMENT

"A Federal Tort Claims Act case is tried without a jury." 28 U.S.C. § 2402. Therefore, the District Court's Judge makes a discretionary "Final Judgment" in an FTCA case against the United States based on FTCA regulations provided in 28 U.S.C. §§ 2671-80, and 1346. An FTCA case against the United States is barred from

proceeding in District Court under FTCA regulations 28 U.S.C. § 2676, "*Judgment at Bar*," and § 2680 "*Exceptions for FTCA Waiver of Sovereign Immunity.*" Petitioner's *only* FTCA Case No. 4:05CV01844 filed against the United States on December 2005, did not meet the criteria to be *barred* by either 28 U.S.C. §§ 2672 or 2680.

Petitioner's Evidence: (1) Under penalty of perjury, Petitioner swears that she did not file a FTCA case against the United States that was dismissed with prejudice in the District Court, November 2005. (2) Under penalty of perjury, Petitioner swears that no FTCA case against the United States was served on the U.S. Attorney of Arkansas, Bud Cummins/Fletcher Jackson, that the District Court dismissed with prejudice, November 2005. (3) Under penalty of perjury, Petitioner swears that there is no FTCA case filed against the United States on record in the District Court that was dismissed with prejudice, November 2005.

In using the *de novo* standard of review, the Eighth Circuit simply "review[ed] the question of law anew:" ruling "If Petitioner had filed two FTCA cases against the United States, then the second cased is barred by the Res Judicata Doctrine or FTCA Judgment at Bar, 28 U.S.C. § 2672." "Only FTCA cases are authorized against the United States." 28 U.S.C. § 1346. However, since there were no facts supporting the District Court's Judge "discretionary" decision that "Petitioner had filed two FTCA cases, whereas the first had been dismissed with prejudice," the Eighth Circuit should have applied the "*clearly erroneous*" and "*abuse of discretion*" standard of review in order to decide an "Appeal" decision based on fact and reason.

If the Eighth Circuit had applied the "*clearly erroneous*" standard to the District Court's finding of fact, it

would have found "evidence that a mistake had been committed." The District Court had no records as proof that Petitioner had filed a FTCA case against the United States that had been dismissed with prejudice, November 2005, prior to her filing FTCA Case No. 4:05CV01844, December 2005. The Arkansas U.S. Attorney has no records showing Petitioner had previously filed a FTCA case against the United States that had been dismissed with prejudice November 2005, prior to her filing FTCA Case No. 4:05CV01844, December 2005.

Since Petitioner's Appeal challenged the District Court Judge's lies concerning the facts that it used to bar Petitioner's FTCA Case No. 4:05CV01844, the appellate court should have also applied the "*abuse of discretion*" standard of review to the District Court Judge's "discretionary" decision. The results of the District Judge's discretionary decision was "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but of perversity of will, not the exercise of judgment, but the defiance thereof, not the exercise of reason, but rather of passion or bias."

CONCLUSION

In light of the above facts, this Court should allow Petitioner to proceed with the litigation of her FTCA Personal Injury Case No. 4:05CV01844 against the United States. Also since the District and Appeals Courts have been outrageously biased and prejudiced against Petitioner in favor of the United States, she requests to be allowed to litigate this case in the U.S. Supreme Court under this dark cloud.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

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Pro Se